

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FERNANDO MATEO, et al.,

Plaintiffs,

-against-

UNIVERSAL LANGUAGE CORPORATION,

Defendant.  
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NICHOLAS G. GARAUFIS, United States District Judge.

**ORDER**

**13-CV-2495 (NGG) (JO)**

Plaintiff Fernando Mateo brought this action, on behalf of himself and similarly situated persons, against Defendant Universal Language Corporation on April 24, 2013, under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., and the New York Labor Law, Article 19, §§ 650, et seq., alleging failure to pay overtime wages. (Compl. ¶¶ 1-2 (Dkt. 1).) Pretrial matters and discovery proceeded before Magistrate Judge James Orenstein.

Defendant initially defaulted. (See Pl.'s Req. for Certificate of Default (Dkt. 8).) Eventually, Defendant answered the Complaint on September 5, 2013, pursuant to a Stipulation and Order signed by the parties and so-ordered by Judge Orenstein. (Answer (Dkt. 10); Order Vacating Clerk's Entry of Default (Dkt. 12).) Subsequently, the parties stipulated to the conditional certification of a collective action (see Nov. 7, 2013, Order), and discovery proceeded through early July 2014, including the deposition of Defendant's President, Ethel Ugbebor ("Ugbebor"). (See July 11, 2014, Status Report (Dkt. 40); July 16, 2014, Min. Entry (Dkt. 41).) Since mid-July 2014, however, Ugbebor has not responded to repeated efforts by Defendant's counsel to communicate with her about the case, and Ugbebor failed to participate

in required court conferences. (See July 29, 2014, Ltr. (Dkt. 42); Aug. 19, 2014, Ltr. (Dkt. 43); Aug. 20, 2014, Min. Entry (Dkt. 44); Sept. 12, 2014, Min. Entry (Dkt. 45).)

On September 12, 2014, Judge Orenstein held a status conference at which Ugbebor had been ordered to appear or risk a recommendation that the court strike the Answer on the grounds that the defense of the case had been abandoned. Ugbebor did not appear. (Sept. 12, 2014, Min. Entry.) Judge Orenstein gave Defendant's counsel an opportunity to show cause why he should not recommend that this court deem the defense of the case abandoned and strike the Answer. (Id.) Defendant's counsel stated that he had no such legal or factual argument to present. (Id.)

On September 15, 2014, Judge Orenstein issued a Report and Recommendation ("R&R"), recommending that the court strike Defendant's Answer pursuant to Federal Rules of Civil Procedure 16(f)(1) and 37(b)(2)(A)(iii), and permit Plaintiffs to seek a default judgment. (R&R (Dkt. 46).) No party has objected to Judge Orenstein's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 3 ("Any objections to this Report and Recommendation must be filed no later than October 2, 2014. Failure to file objections within this period designating the particular issues to be reviewed waives the right to appeal the district court's order.")) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at \*1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). Finding no clear error, the court adopts the R&R in full. See Porter v. Potter, 219 F. App'x 112 (2d Cir. 2007) (summary order).

Accordingly, the court ADOPTS IN FULL the R&R and STRIKES Defendant's Answer. Plaintiffs are therefore free to seek a certificate of default and default judgment. Plaintiffs' counsel were to have submitted a letter by September 26, 2014, stating whether Plaintiffs would continue to press their claims by means of filing a motion for default judgment (see Sept. 12, 2014, Min. Entry), but the court has not yet received such a letter. Plaintiffs' counsel are DIRECTED to submit a letter informing the court of Plaintiffs' intention by October 20, 2014.

SO ORDERED.

Dated: Brooklyn, New York  
October 6, 2014

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS  
United States District Judge